

23 June 2016

National Transport Commission
Level 15/628 Bourke Street
Melbourne VIC 3000

Enforcement Approaches for Speeding Heavy Vehicles Discussion Paper

The Australian Logistics Council (ALC) welcomes the opportunity to provide a submission on the *Enforcement Approaches for Speeding Heavy Vehicles Discussion Paper* (the Discussion Paper).

As a general proposition, ALC believes the Heavy Vehicle National Law (HVNL) exists to encourage improved safety outcomes. It does not exist to unnecessarily expose operators to criminal sanction, or consignors/consignees to undue costs and delays to their business through the creation of powers and offences under the HVNL, that do not seem to lead to improved safety outcomes.

ALC member responses received on the Discussion Paper make clear that there must be clear evidence justifying any changes to the law. In particular, there must be clear evidence to justify changing the usual operation of law requiring a prosecutor to prove beyond all reasonable doubt all integers of an offence before someone can be found guilty of an offence.

The HVNL imposes a number of high level performance-based laws on duty holders, who need to show that all reasonable steps have been taken to ensure compliance, with chapter two of the Discussion Paper listing four pages of sanctions and mechanisms designed (or that could be used) to encourage compliance.

It should be noted that there has been an improvement in the safety performance of the heavy vehicle fleet. Data from the Bureau of Infrastructure, Transport and Regional Economics show fatal crashes involving articulated trucks decreased by an average of 4.4% annually over three years to March 2016¹.

ALC therefore believes any further extension² of sanctions must satisfy the question: are there reasonable grounds to believe the creation or extension of an offence will lead to tangible improvement in safety outcomes?

Speed limiter deemed noncompliance

ALC notes Part 2.4.2 of the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (2011)* says:

Vicarious, collective or deemed liability should only be used in limited circumstances. This is because it cuts across the fundamental principle that an individual should be responsible only for his or her own acts and omissions.

A sanction is available to penalise the speeding event that undoubtedly gave rise to the operator attracting the attention of the law enforcement officer that commenced the prosecution process. That is the offence that is committed and dealt with as appropriate.

Section 60 of the HVNL is designed to penalise heavy vehicle operators that contravene a heavy vehicle standard, while section 93 captures the highly aggravating offence of a person tampering with a speed limiter.

¹ Fatal Heavy Vehicle Crashes—Quarterly Bulletins – March Quarter, BITRE.

² For the purposes of this submission 'extension' includes the concept of reversing, in one form or another, the burden of proof on a defendant.

These sections are designed to capture and penalise specific behaviour. No evidence has been presented to suggest that the mere fact of a speeding offence necessarily means that a speed limiter is faulty (because, for instance, a vehicle had recently been on a downhill run) or that someone had tampered with a unit.

Moreover, no evidence has been provided as to how the imposition of this offence would act as a deterrent that would:

- improve driver behaviour;
- improve operator attention to detail to ensure road standards have been met;
- dissuade tampering with equipment (as relevant).

It would appear that putting operators to the financial cost of having to adduce evidence to rebut the evidential assumption that either road standards have not been met, or that a speed limiter has been tampered with (as required), is not a reasonable or proportionate proposal; a consideration that may be relevant in the rights-based jurisdictions of Victoria and the ACT.

ALC believes it is inappropriate to impose what is effectively a reverse onus of proof in this situation, for the same reasons that the reverse onus of proof in the context of executive officer liability has been scrutinised and a decision made to remove the liabilities.

It follows that ALC reflects the concerns expressed by some associations and jurisdictions (discussed on page 15 of the Discussion Paper) indicating that this proposal is contradictory to the positive duties approach implicit in the amendments to the HVNL agreed to by Ministers in November 2015.

To conclude, page 13 of the Discussion Paper says:

The purpose of this proposal is to create an evidentiary provision that avoids the technical challenges of determining speed limiter compliance. This means that an offence could be prosecuted more quickly and more efficiently than currently under either section 60 or section 93 of the HVNL.

In the absence of evidence of a deterrent effect, 'speed and efficiency in prosecutions' are insufficient grounds to impose a costly evidentiary burden on operators.

Grounding speeding heavy vehicles

ALC also opposes this provision.

Any 'grounding' of a heavy vehicle imposes costs and burdens on consignors and consignees who are unable to have freight move down the logistics chain. In particular, there will invariably be circumstances where freight is being carried on a 'just in time' basis in which failure to deliver could lead to significant ramifications for the business of the consignee that a heavy vehicle operator or enforcement officer will simply know nothing about.

To claim that 'anti-hoon' laws are 'comparable' to this proposal, as the Discussion Paper does on page 16, is simply erroneous. Most 'hoon' laws involve the unlawful use of (in the vast majority of circumstances) passenger vehicles or a vehicle like a utility, with the immediate impoundment only directly affecting those in the vehicle, and the vehicle's owner.

In this case, the consignees and consignors of the freight being carried are immediately impacted by the 'grounding' or impoundment, as much as the heavy vehicle driver and vehicle owner/operator, which is a far wider circle of impact.

Given this, unless a mechanical or driver impairment exists that directly impacts road safety, investing discretion in an enforcement officer to 'ground' a vehicle is a disproportionate power to confer on an enforcement officer.

ALC believes there is a strong need for those proposing this idea to provide substantial, definitive evidence about why this is in the public interest. This is absent in this Discussion Paper.

The proposal should therefore be rejected at this stage, and if it must proceed, no final decision should be made unless there is a full regulatory impact statement prepared to determine whether the proposal will lead to a net public benefit. This is necessary because of the potential impact that could be suffered by third parties unconnected with the unlawful behaviour that has been committed if a vehicle is grounded.

Please contact me on 0418 627 995 or at Michael.kilgariff@austlogistics.com.au should you wish to discuss ALC's submission further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Kilgariff', with a stylized flourish at the end.

MICHAEL KILGARIFF
Managing Director